

(2023) 01 BOM CK 0049

In the Bombay High Court

Case No : Civil Revision Application No.16 Of 2015

Capistrano Gomes And Others

APPELLANT

Vs

State Of Goa And Others

RESPONDENT

Date of Decision : 09-01-2023

Acts Referred:

Limitation Act, 1963 — Article 58

Code Of Civil Procedure, 1908 — Order 7 Rule 11, Order VII Rule 11(a), Order 7 Rule 11(d)

Goa Daman And Diu Land Revenue Code, 1968 — Section 14, 14(3), 14(4), 14(5), 103

Limitation Act, 1963 — Section 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24

Citation : (2023) 01 BOM CK 0049

Hon'ble Judges : Bharat P. Deshpande, J

Bench : Single Bench

Advocate : Nitin Sardessai, Vibhav Amonkar, Pravin N. Faldessai

Final Decision : Allowed

Judgement

Bharat P. Deshpande, J

1. Initially, the applicant/petitioner filed Writ Petition No.23 of 2015 challenging the order 03.01.2015 whereby the application filed by the petitioner/applicant under Order VII Rule 11 CPC for rejection of the plaint was dismissed by the trial Court. Vide order dated 15.06.2015 in MCA/349/2015, the Writ Petition was converted into Civil Revision Application and was, accordingly, registered. Thereafter, the matter was taken up for final disposal. However, vide order dated 10.07.2015 revision was admitted and the hearing was expedited.

2. Heard learned senior counsel Shri Nitin Sardessai alongwith Shri Vibhav Amonkar for the applicant, Shri Faldessai, learned Additional Government Advocate for respondent no.1. None appeared for the other respondents.

3. Shri Nitin Sardessai would submit that the application for rejection of the plaint was filed on two counts. Firstly, it does not show the cause of action and

consequently, it is barred by limitation. He would submit that the plaintiff shows no cause of action for filing the suit, i.e. right to sue on a particular and specific right accruing in favour of the plaintiff. Secondly, he claimed that even if it is considered that such right accrued to the plaintiff, it first accrued in the year 2002 itself and, therefore, the suit filed in the year 2012 is hopelessly barred. He would submit that the applicant/defendant purchased the suit property vide a sale deed and, accordingly, applied for the inclusion of his name under Section 14 of the Land Revenue Code. The defendant specifically made averments before the Deputy Collector in Land Revenue Code Case No.LRC/GDL/MAR/1/2022 that the property was purchased by the plaintiff vide sale deed dated 15.05.2002 from Mr Anthony Mathias and others and put in possession of the property bearing Survey No.194/2-B alongwith the house existing therein. Since the survey was promulgated and the name of the predecessor-in-title of the plaintiff is not appearing and the name of the respondent herein was erroneously recorded, the matter was filed under Section 14(3) of the Land Revenue Code to delete the name of the present respondent no.1 and to include the name of the applicant.

4. Mr Nitin Sardessai then would submit that respondent no.1 filed a written statement before the Deputy Collector and after enquiry, Deputy Collector accepted the contention of the applicant and vide order dated 21.07.2003 directed to delete the name of respondent no.1 and to include the name of the applicant in the occupant's column. The order passed by the Deputy Collector was then challenged by respondents before the Administrative Tribunal, Goa in Land Revenue Appeal No.36 of 2011. By judgement dated 07.12.2011, the Appeal was dismissed. He, therefore, would submit that dismissal of Appeal would not give any fresh cause of action to the respondents to file a suit and that too challenging the sale deed of the applicant to be declared as null and void

5. Mr Pravin Faldessai, learned Additional Government for the State would submit that while deciding an application under Order VII Rule 11 of CPC, this Court cannot travel beyond a plaint. A plaint filed in the present matter discloses a specific cause of action as mentioned in paragraph 48 and that such cause of action is continuous. He would submit that the question of limitation is a mixed question of law and fact and, therefore, the learned trial Court has rightly considered and rejected the application. He then submitted that paragraph 29 of the plaint clearly shows a claim of the plaintiff which has been raised and is to be read with paragraph 48.

6. Rival contentions fall for the consideration of this Court.

7. The applicants herein are the original defendants no.1 and 2. Respondent no.1 is the original plaintiff. The other respondents are original defendants no.3 to 8 from whom applicants purchased the said property vide a registered sale deed.

8. Though it is well settled that while deciding an application under Order VII Rule 11 CPC, the contentions of the plaint are only required to be taken into

consideration, it is also well-settled proposition of law that documents which the plaintiff placed reliance on and consider as documents which are relevant for deciding the matter by submitting the list of reliance, would be considered as part and parcel of the plaint to be taken into consideration for ascertaining whether an application under Order VII Rule 11 CPC could be considered and decided with it.

9. In the case of *Hardesh Ores (P) Ltd v/s. Hade and Company* (2007) 5 SCC 614 the apex court has observed in paragraphs 25, 33 and 34 as under:-

"25. The language of Order VII Rule 11 CPC is quite clear and unambiguous. The plaint can be rejected on the ground of limitation only where the suit appears from the statement in the plaint to be barred by any law. Mr. Nariman did not dispute that "law" within the meaning of clause (d) of Order VII Rule 11 must include the law of limitation as well. It is well settled that whether a plaint discloses a cause of action is essentially a question of fact, but whether it does or does not must be found out from reading the plaint itself. For the said purpose the averments made in the plaint in their entirety must be held to be correct. The test is whether the averments made in the plaint, if taken to be correct in their entirety, a decree would be passed. The averments made in the plaint as a whole have to be seen to find out whether clause (d) of Rule 11 of Order VII is applicable. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction of words or change of its apparent grammatical sense. As observed earlier, the language of clause (d) is quite clear but if any authority is required, one may usefully refer to the judgments of this court in *Liverpool & London S.P. & I Association Ltd. Vs. M.V. Sea Success I* and another (2004) 9 SCC 512 and *Popat and Kotecha Property Vs. State Bank of India Staff Association* (2005) 7 SCC 510.

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33. The respondent sought rejection of the plaint by filing application under Order VII Rule 11 CPC contending that the suit was barred by limitation on the face of it. It was contended before the High Court as also before us that the plaint has been cleverly drafted to give it the appearance of a simple suit for injunction to enforce the terms of Clauses 15 and 20 of the agreement which

incorporated negative covenants prohibiting mining operation by anyone else except the appellant- Hardesh, or without its permission. It was submitted before us that the law is well settled that the dexterity of the draftsman whereby the real cause of action is camouflaged in a plaint cleverly drafted cannot defeat the right of the defendant to get the suit dismissed on the ground of limitation if on the facts, as stated in the plaint, the suit is shown to be barred by limitation. In T. Arivandandam Vs. T.V. Satyapal and another 1977 (4) SCC 467 this Court observed as under :-

"5. We have not the slightest hesitation in condemning the petitioner for gross abuse of the process of the court repeatedly and unrepentently resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving plaints. The learned Munsif must remember that if on a meaningful - not formal- reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order VII Rule 11, C.P.C., taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order X, C.P.C. An activist Judge is the answer to irresponsible law suits."

34. In I.T.C. Limited Vs. Debts Recovery Appellate Tribunal and Others: 1998(2) SCC 70 this Court noticed the judgment in Arivandandam and observed as under (SCC o.77, Para 16):-

" The question is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order 7 Rule 11 CPC. Clever drafting creating illusions of cause of action are not permitted in law and a clear right to sue should be shown in the plaint."

10. In the case of Shri Jahangir @Jawahar and others v/s. Smt. Maureen de Sequeira 2017(2) Goa L.R.168 (Bom)(PB) this Court in paragraph 14 observed thus:

"14. It is now well settled that for the purposes of the determination of the question as to whether, the plaint is liable to be rejected under Order VII, Rule 11(d) of CPC, the Court has to confine to the allegations in the plaint and in the documents produced and relied upon by the plaintiff. This Court in the case of SNP Shipping Services Pvt. Ltd. and others v/s. World Tanker Carrier Corporation, 2000 (2) Mh.L.J. 570 has held that when the plaint is based on a document, the said document can also be looked into, while dealing with the application under Order VII, Rule 11(d) of CPC. There cannot be any manner of dispute that limitation is a mixed question of law and fact. However, that does not mean that in every case, it is a question involving disputed facts. In other words, there may be cases where, the facts on the basis of which, the issue of limitation has to be decided are either admitted, or are undisputed or are clearly

borne out of record. The fact that the plaint in the given case can be rejected as being barred by limitation, would itself indicate that there may be a case where, issue of limitation may not necessarily depend on facts, which are disputed, requiring trial, else otherwise, the plaint could never be rejected as being barred by limitation. Thus, the submission that limitation being a mixed question of law and fact, the plaint cannot be rejected, to my mind cannot be accepted."

11. Recently, the Division Bench of this Court in First Appeal No.2350 of 2021 in which one of us (Bharat P. Deshpande, J) was a Member, held as under:-

'34. In a recent decision of the Supreme Court in C. S. Ramaswamy v/s. E. K. Senthil and Ors (2022 Online SC 1330) the Supreme Court taking a review on the exposition of law, reiterated the principles of law on clever drafting by the plaintiff so as to pursue a dead cause of action to hold that the plaint in such circumstances would deserve to be rejected, has observed in paragraphs 31 and 32 as under:-

'31. Even the averments and allegations in the plaint with respect to fraud are not supported by any further averments and allegations how the fraud has been committed/played. Mere stating in the plaint that a fraud has been played is not enough and the allegations of fraud must be specifically averred in the plaint, otherwise merely by using the word "fraud", the plaintiffs would try to get the suits within the limitation, which otherwise may be barred by limitation. Therefore, even if the submission on behalf of the respondents - original plaintiffs that only the averments and allegations in the plaints are required to be considered at the time of deciding the application under Order VII Rule 11 CPC is accepted, in that case also by such vague allegations with respect to the date of knowledge, the plaintiffs cannot be permitted to challenge the documents after a period of 10 years. By such a clever drafting and using the word "fraud", the plaintiffs have tried to bring the suits within the period of limitation invoking Section 17 of the limitation Act. The plaintiffs cannot be permitted to bring the suits within the period of limitation by clever drafting, which otherwise is barred by limitation. At this stage, a recent decision of this Court in the case of Raghwendra Sharan Singh(supra) is required to be referred to. In the said decision, this Court had occasion to consider all earlier decisions on exercise of powers under Order VII Rule 11 CPC, which are considered by this Court in paragraphs 6.4 to 6.9 as under:—

"6.4. In T. Arivandandam [T. Arivandandam v. T.V. Satyapal, (1977) 4 SCC 467], while considering the very same provision i.e. Order 7 Rule 11 CPC and the decree of the trial court in considering such application, this Court in para 5 has observed and held as under: (SCC p. 470)

"5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentantly resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif's Court,

Bangalore, is a flagrant misuse of the mercies of the law in receiving complaints. The learned Munsif must remember that if on a meaningful — not formal — reading of the complaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order 7 Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order 10 CPC. An activist Judge is the answer to irresponsible law suits.”

6.5. In Church of Christ Charitable Trust & Educational Charitable Society[Church of Christ Charitable Trust & Educational Charitable Society v. Ponniammam Educational Trust,(2012) 8 SCC 706], this Court in para 13 has observed and held as under : (SCC p. 715)

“13. While scrutinising the complaint averments, it is the bounden duty of the trial court to ascertain the materials for cause of action. The cause of action is a bundle of facts which taken with the law applicable to them gives the plaintiff the right to relief against the defendant. Every fact which is necessary for the plaintiff to prove to enable him to get a decree should be set out in clear terms. It is worthwhile to find out the meaning of the words “cause of action”. A cause of action must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue.”

6.6. In ABC Laminart (P) Ltd. v. A.P. Agencies [(1989) 2 SCC 163], this Court explained the meaning of “cause of action” as follows : (SCC p. 170, para 12)

“12. A cause of action means every fact, which if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded. It does not comprise evidence necessary to prove such facts, but every fact necessary for the plaintiff to prove to enable him to obtain a decree. Everything which if not proved would give the defendant a right to immediate judgment must be part of the cause of action. But it has no relation whatever to the defence which may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff.”

6.7. In Sopan Sukhdeo Sable[Sopan Sukhdeo Sable v.Charity Commr.,(2004) 3 SCC 137] in paras 11 and 12, this Court has observed as under : (SCC p. 146)

“11. In ITC Ltd. v. Debts Recovery Appellate Tribunal [ITC Ltd. v.Debts Recovery Appellate Tribunal,(1998) 2 SCC 70] it was held that the basic question to be decided while dealing with an application filed under Order 7 Rule 11 of the Code is whether a real cause of action has been set out in the complaint or something purely illusory has been stated with a view to get out of Order 7 Rule 11 of the

Code.

12. The trial court must remember that if on a meaningful and not formal reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise the power under Order 7 Rule 11 of the Code taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, it has to be nipped in the bud at the first hearing by examining the party searchingly under Order 10 of the Code. (See *T. Arivandandam v. T.V. Satyapal*[(1977) 4 SCC 467].)"

6.8. In *Madanuri Sri Rama Chandra Murthy* [*Madanuri Sri Rama Chandra Murthy v. Syed Jalal*, (2017) 13 SCC 174], this Court has observed and held as under : (SCC pp. 178-79, para 7)

"7. The plaint can be rejected under Order 7 Rule 11 if conditions enumerated in the said provision are fulfilled. It is needless to observe that the power under Order 7 Rule 11 CPC can be exercised by the court at any stage of the suit. The relevant facts which need to be looked into for deciding the application are the averments of the plaint only. If on an entire and meaningful reading of the plaint, it is found that the suit is manifestly vexatious and meritless in the sense of not disclosing any right to sue, the court should exercise power under Order 7 Rule 11 CPC. Since the power conferred on the court to terminate civil action at the threshold is drastic, the conditions enumerated under Order 7 Rule 11 CPC to the exercise of power of rejection of plaint have to be strictly adhered to. The averments of the plaint have to be read as a whole to find out whether the averments disclose a cause of action or whether the suit is barred by any law. It is needless to observe that the question as to whether the suit is barred by any law, would always depend upon the facts and circumstances of each case. The averments in the written statement as well as the contentions of the defendant are wholly immaterial while considering the prayer of the defendant for rejection of the plaint. Even when the allegations made in the plaint are taken to be correct as a whole on their face value, if they show that the suit is barred by any law, or do not disclose cause of action, the application for rejection of plaint can be entertained and the power under Order 7 Rule 11 CPC can be exercised. If clever drafting of the plaint has created the illusion of a cause of action, the court will nip it in the bud at the earliest so that bogus litigation will end at the earlier stage."

6.9. In *Ram Singh* [*Ram Singh v. Gram Panchayat Mehal Kalan*, (1986) 4 SCC 364], this Court has observed and held that when the suit is barred by any law, the plaintiff cannot be allowed to circumvent that provision by means of clever drafting so as to avoid mention of those circumstances, by which the suit is barred by law of limitation."

Applying the law laid down by this Court in the aforesaid decisions on exercise of powers under Order VII Rule 11 CPC to the facts of the case on hand and the averments in the plaints, we are of the opinion that both the Courts below have

materially erred in not rejecting the plaints in exercise of powers under Order VII Rule 11(d) CPC. The respective suits have been filed after a period of 10 years from the date of execution of the registered sale deeds. It is to be noted that one suit was filed by the minor, which was filed in the year 2006, in which some of the plaintiffs herein were also party to the said suit and in the said suit, there was a specific reference to the Sale Deed dated 19.09.2005 and the said suit came to be dismissed in the year 2014 and immediately thereafter the present suits have been filed. Thus, from the averments in the plaint and the bundle of facts stated in the plaint, we are of the opinion that by clever drafting, the plaintiffs have tried to bring the suits within the period of limitation, which otherwise are barred by limitation. Therefore, considering the decisions of this Court in the case of T. Arivandandam (supra) and other decision of Raghwendra Sharan Singh (supra), and as the respective suits are barred by the law of limitation, the respective plaints are required to be rejected in exercise of powers under Order VII Rule 11 CPC.'

(emphasis supplied)

12. Keeping in mind the above proposition of law and applying it to the matter in hand, first and foremost the aspect is with regard to the law of limitation which has been raised for invoking Order VII Rule 11(d) of CPC which provides that the plaint shall be rejected "where the suit appears from the statement in the plaint to be barred by any law"

13. Respondent no.1 filed a suit before the District Court at Panaji bearing Civil Suit no.68 of 2012 for declaration, permanent injunction and cancellation and annulment of sale deed dated 15.05.2002 and other consequential reliefs against present applicants and respondents no.3 to 8. In paragraph 2 of the plaint it is claimed that there exists an immovable property known as 'QUIDAL' alias 'QUINDAL' alias 'QUIDOL' bearing Survey No.194/13 of Village Calangute, Bardez-Goa having an area of 927 sq.mts. This property is shown as a suit property. Though it is claimed that during the survey operations, this suit property was surveyed in the name of the plaintiff, i.e. Director of Settlement And Land Records, Government of Goa, this survey entry was not disturbed by any civil proceedings nor defendants took steps to delete the name of the plaintiff from the survey records and, thus, such entries stand promulgated.

14. Plaint paragraph no. 6 clearly shows the knowledge of the plaintiff that the defendant no. 3 and 4 sold the suit property to defendant no.1 vide the sale deed dated 15.05.2022. However, it is further claimed that the said defendants allowed the survey entry to remain in favour of the plaintiff for nearly 40 years without protesting or raising any objection. Since the survey records of Village Calangute were promulgated somewhere in the year 1989 and thus, no survey authorities are entitled to carry out any correction unless the person who will be affected adversely by such change gives no objection. The other remedy was to file civil proceedings before the Court for relief of declaration. The plaint further admits in paragraph

10 onwards that defendant no.1 moved an application dated 22.07.2002 before the Deputy Collector, Bardez Mapusa Goa under Section 14(3) of Land Revenue Code praying for reliefs against the plaintiffs. The Deputy Collector, after conducting an enquiry ordered the deletion of the name of the plaintiffs from the Record of Rights with regard to survey no.194/13 of Village Calangute. This order was passed by the Deputy Collector on 21.07.2003, which was challenged by the plaintiffs before the Administrative Tribunal, Panaji vide Land Revenue Appeal No.36 of 2011. However, said Appeal was rejected vide judgment and order dated 07.12.2011. Plaintiffs further claimed in paragraph 13 that neither the Deputy Collector nor the Administrative Tribunal considered the genuine objections raised by the plaintiffs in such proceedings. It is further claimed that both the said authorities/tribunal had no authority at all in absence of the plaintiff's consent to pass such an order under Section 14(3) of the Land Revenue Code.

15. Further, paragraph 17 of the plaint aver about the sale deed by which the suit property was sold in favour of defendants no.1 and 2 and it is claimed that there is no material to show that defendants no.3 to 8 were owners of the said property. On this ground, the plaintiff in paragraph 23 claimed that the sale deed is bad in law and has no legal effect. On such premises it is claimed in paragraph 29 of the plaint that defendant no.1 failed to approach the appropriate authority, i.e. Civil Court and deliberately approached incompetent authority, i.e. Deputy Collector, and since the suit property is already promulgated about 23 years ago showing the name of the plaintiffs in the occupant's column, the Deputy Collector and the Tribunal had no power to delete the name. In paragraph 31, it is claimed that irreparable loss will be caused to the plaintiffs if both the orders, i.e., the order of the Deputy Collector and the Tribunal, are not set aside. Finally, in paragraph 48 of the plaint, the plaintiffs disclosed the cause of action which reads thus:

'48. The plaintiffs state that the cause of action in favour of the plaintiffs arose for the first time on 22/7/2002 when the defendant no.1 moved an application before the Trial Court under Section 14(3) of the Land Revenue Code was moved and it lastly arose on 7/12/2011 when Administrative Tribunal at Panaji Goa disposed of the Land Revenue Appeal no.36/2011 and the same still continues. Hence this suit is filed within the period of limitation and therefore not barred by law.'

16. Plain reading of paragraph 48 clearly admits that the cause of action in favour of the plaintiffs arose for the first time on 22.07.2002 when defendant no.1 moved an application before the trial Court under Section 14(3) of the Land Revenue Code. Thus, the first cause of action accrued in favour of plaintiffs is, admittedly, on 22.07.2002. The reliefs claimed in the suit in the prayer clauses are thus:

(a) Declaration in favour of the plaintiff that the Sale Deed dated 15/05/2002 in favour of the Defendant No.1 is null and void and that the said Sale Deed be

ordered to be delivered up directing the Sub Registrar of Bardez, Mapusa Goa to cancel the registration entry of the said Sale Deed in favour of the Defendant no. 1 as more particularly stated at para 6 (Six) of the plaint. Also for a further declaration that the entry in the occupant's column of survey no.194/13 of Village Calangute of Bardez Taluka be ordered to be continued without any deletion till the appropriate Civil Court of competent jurisdiction grants reliefs to the defendant no.1 for removal of the name of the plaintiff from Form I & XIV of survey no.194/13 of Village Calangute and or to order to restore the position ante 21/07/2003.

(b) For permanent injunction restraining the defendants and more particularly the Defendant No.1 from giving effects to the Judgement and Order dated 21/7/2003 passed by the Trial Court and also the Judgement and Order dated 7/12/2011 passed by the Hon'ble Administrative Tribunal of Goa at Panaji and if effect is given to, to order status-quo ante 21/07/2003.

(c) For direction to the Sub-Registrar of Bardez to cancel and deliver up the Sale Deed dated 15/05/2002 and registered in the said office under no.1178 at pages 154 to 169 of Book no. I, Volume no. 910 dated 23/05/2002.

(d) For further declaration that the amalgamation dated 02/04/2004 is bad in law and therefore nonest as the same was based on incompetent orders passed by the Dy. Collector, Mapusa which came to be followed by the Plaintiffs' said Directorate and implemented by the Mamlatdar of Bardez.

(e) For Costs.'

17. The main relief as claimed in the suit is a declaration in favour of plaintiffs declaring the sale deed dated 15.05.2022 as null and void. The other reliefs are consequential reliefs to prayer clause (a). It is a well-settled proposition of law that limitation starts to run from the date of the cause of action accruing in favour of the plaintiffs and it never stops till the period as disclosed in the respective Articles of the Limitation Act, is over.

18. In the present matter, since the suit is for the declaration of the sale deed as null and void, Article 58 of the Limitation Act, 1963 would stand attracted which reads thus:-

'Description of suit

Period of limitation

Time from which period begins to run

58. To obtain any other declaration.

Three years

When the right to sue first accrues

19. Thus, it is crystal clear that the limitation starts from the date when the right

to sue first accrues to the plaintiffs. Paragraph 48 as quoted earlier clearly show that the cause of action accrued to the plaintiffs for the first time on 22.07.2002. This means that the right to sue first accrued on 22.07.2002. Admittedly, the suit was filed in December 2012 which means after a period of more than 10 years from the date of accruing firstly the right to sue in favour of the plaintiffs. If that is so, Section 3 of the Limitation Act which speaks of the bar of limitation would be substantially attracted as there is a clear bar of limitation to launch a civil suit initiated, appeal preferred and the application made after the prescribed period of limitation although limitation has not been set up as a defence. It is admitted and well settled that Sections 4 to 24 of the Limitation Act are not attracted to the suit for declaration. Thus, when the plaint itself admits that the cause of action first arose on 22.07.2002, said suit ought to have been filed within a period of 3 years from the date of accrual of the first cause of action.

20. It is also well settled that dismissal of the Appeal filed before the Administrative Tribunal in the year 2011 would not give a fresh cause of action as plaintiffs in the present suit are praying to declare the sale deed dated 15.05.2002 as null and void. Knowledge of the plaintiffs about such a sale deed is apparently clear from the proceedings filed before the Deputy Collector in LRC No.1/2002 under Section 14(3) of the Land Revenue Code.

21. A perusal of such application filed by defendant no.1 specifically against the State of Goa produced at Exhibit B colly shows that there is a reference to the sale deed dated 15.05.2002 and on that basis applicant therein called upon the Deputy Collector to conduct an enquiry and to delete the name of the Government from the occupant's column.

22. Section 14 of the Land Revenue Code which appears in Chapter III reads thus:-

'CHAPTER III

Of lands

14. Title of Government to lands, etc.— (1) All lands, public roads, lanes and paths and bridges, ditches, dikes and fences on or beside the same, the bed of the sea and of harbours and creeks below the high water mark, and of rivers, streams, nallas, lakes and tanks, and all canals and water courses, and all standing and flowing water and all rights in or over the same or appertaining thereto, which are not the property of any person, are and are hereby declared to be the property of the Government subject to right of way, and all other rights, public and individual, legally subsisting.

Explanation:— In this section, "high water-mark" means the highest point reached by ordinary spring tides at any season of the year.

(2) Unless it is otherwise expressly provided in any law for the time being in force or in the terms of a grant made by the Government, the right to mines, minerals and mineral products shall vest in the Government and it shall have all the

powers necessary for the proper enjoyment of such rights.

(3) Where any property or any right in or over any property is claimed by or on behalf of the Government or by any person as against the Government and the claim is disputed, such dispute shall, after due notice has been given and after holding a formal inquiry, be decided by the Collector or 12[an officer authorised by the Government in this behalf.

(4) Any person aggrieved by an order made under sub-section

(3) or in appeal or revision there from may institute a civil suit to contest the order within a period of one year from the date of such order, and the decision of the civil court shall be binding on the parties.

(5) Any suit instituted in any civil court after the expiration of one year from the date of any order passed under sub-section (3) or, if appeal or revision application has been made against such order within the period of limitation, then from the date of any order passed by the appellate or revisional authority, shall be dismissed (though limitation has not been set up as a defence) if the suit is brought to set aside such order or if the relief claimed is inconsistent with such order, provided that the plaintiff has had due notice of such order.

(6) Any person shall be deemed to have had due notice of an inquiry or order under this section if notice thereof has been given in accordance with rules made in this behalf by the Government.

23. Chapter III deals with the lands and Section 14 deals with the title of Government to lands, etc. Sub-section (3) as quoted above gives power to the Collector or an officer authorised by the Government on that behalf to conduct an enquiry in respect of any right in or over any property wherein the name of Government is recorded and to decide such right either of the private party or the Government, as the case may be. Therefore, it is very much clear from the record that an enquiry conducted by the Deputy Collector, on an application filed by the present applicants, is specifically under Section 14(3) and not under Section 103 of the Land Revenue Code for correction of clerical records. Similarly, sub-Section 4 of Section 14 provides an appeal by the aggrieved party, to the Administrative Tribunal.

24. Sub-section 5 of Section 14 is having much relevance for deciding the present matter and whether such a plaint could be rejected under Order VII Rule 11(a) and (d) as tried to be projected by the applicants. This provision is specifically carved out to challenge the order passed by the Deputy Collector and, thereafter, by any appellate authority, by instituting a civil suit.

25. Sub-Section 5 of Section 14 of the Land Revenue Code is worded in a negative manner thereby saying that any suit instituted in any civil Court after the expiration of one year from the date of any order passed under sub-section (3) or, if an appeal or revision application has been made against such order within the period of limitation, then from the date of any order passed by the

appellate authority or revisional authority, shall be dismissed (though limitation has been not set up as a defence) if the suit is brought to set aside such order or if the relief claimed is inconsistent with such order, provided that the plaintiff had due notice of such order.

26. A plain reading of the plaint though nowhere discloses that the suit is filed under Section 14(5) of the Land Revenue Code, however, reference in paragraph 48 that the cause of action arose lastly on 07.12.2011 with the Administrative Tribunal rejecting the Revenue Appeal No.26/2011, is stated.

27. Prayer clauses (b), (c) and (d) of the plaint as quoted above though not happily worded, claims permanent injunction restraining the defendants from giving effect to the judgment and order dated 21.07.2003 passed by the Deputy Collector and the judgment and order dated 07.12.2011 passed by the Administrative Tribunal and, thereafter, to cancel the sale deed dated 15.05.2022 and also to declare the amalgamation dated 02.04.2004 as bad in law.

28. First of all, there is no prayer to set aside the orders passed by the Deputy Collector and the Administrative Tribunal thereby deleting the name of plaintiffs from the Record of Rights and inserting the name of defendants no.1 and 2 in its place in the suit property. Thus, the so-called relief claimed in the suit is inconsistent with the said orders and the main prayer in the suit, to declare the sale deed dated 15.05.2002 as null and void, is on totally different grounds that defendants no.3 to 8 failed to prove their title to the suit property to convey such title to defendants no.1 and 2. Therefore, the main prayer in the suit is for the declaration of the sale deed dated 15.05.2002 as null and void which is clearly time-barred as the suit is filed in the year 2012 despite the plaintiffs having knowledge about such sale deed in the year 2002 itself. Therefore, the impugned order rejecting the application under Order VII Rule 11 of CPC needs interference. The learned trial Court assumed that such proceedings were filed under Section 103 of the Land Revenue Code, is clearly erroneous. The right to sue first accrued to the plaintiffs as found recorded in paragraph 48 on 22.07.2002 and, thereafter, the suit filed in the year 2012 is hopelessly barred by law of limitation.

29. Having said so, the impugned order needs to be quashed and set aside and consequently, the application filed by the defendants under Order VII Rule 11 CPC dated 15.05.2013 vide Exhibit D-11 needs to be allowed.

30. The revision is, therefore, allowed. The impugned order dated 03.01.2015 below Exhibit D-11 is quashed and set aside. Application at Exhibit D-11 filed under Order VII Rule 11 CPC stands allowed on both counts. Consequently, the plaint in Regular Civil Suit no.168/2012 stands rejected.

31. Parties shall bear their own costs.